MONTANA LEGISLATIVE HISTORY

Chapter 298 1977

Bill H _____ S 301 Original bill & history ___C

H. Committee on	Business Industry		S. Committee on	Judiciary	
Hearing Date(s)	Mar 18	✓ C	Hearing Date(s)	Feb 08	✓ C
	Mar 21	✓ C		Feb 17	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 21	✓ C		Feb 17	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 301

INTRODUCED BY Rasmussen Galt Dave Thomas Warden

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87A-8-102, R.C.M. 1947, is amended to read as follows:

"87A-8-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires

(a) A "security" is an instrument which

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest

in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this chapter and not by Uniform Commercial Code--Commercial Paper even though it also meets the requirements of that chapter. This chapter does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation: ~~all~~

(a) at least 90% of the capital stock of which is held by or for one or more persons, other than individuals, each of whom:

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company

SB301

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(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company

registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and does not hold in excess of 20% of the capital stock of the corporation; or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim." Section 87A-8-301.

"Bona fide purchaser." Section 87A-8-302.

"Broker." Section 87A-8-303.

"Guarantee of the signature." Section 87A-8-402.

"Intermediary bank." Section 87A-4-105.

"Issuer." Section 87A-8-201.

"Overissue." Section 87A-8-104.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 87A-8-320, R.C.M. 1947, is amended to read as follows:

"87A-8-320. Transfer or pledge within a central depository system. (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible

bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 87A-8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 87A-9-304 and 87A-9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons

who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list."

Section 3. There is a new R.C.M. section numbered 5-1601 that reads as follows:

5-1601. Definitions. For the purposes of 5-1602 and 5-1603, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Section 4. There is a new R.C.M. section numbered

5-1602 that reads as follows:

5-1602. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 5-1601, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 87A-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing

securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Section 5. There is a new R.C.M. section numbered 5-1603 that reads as follows:

5-1603. Fiduciaries -- deposit of United States government and agency securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 5-1601, and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the

federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on the effective date of this section or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

Section 6. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through ~~14~~ 16);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92)."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 8, 1977

The meeting of this committee was called to order at 9:35 a.m. on the above date in Room 415 of the State Capitol Building by Senator Turnage, Chairman.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Senator Rasmussen - District 16
Senator Thomas - District 20
John Cadby - Montana Bankers Assn.
John Johnson - Federal Reserve Bank
Daniel Dykstra - Northwestern Union Trust Co.
Tom Campbell - 1st Trust Co. of Montana
Tom Honzel - County Attorneys
Jack Lynch - Executive Secretary, Montana Parole Board

CONSIDERATION OF SENATE BILL 301:

Senator Rasmussen, sponsor of S.B. 301, explained the bill to the committee. He then introduced John Johnson, representing the Federal Reserve Bank who spoke in support of the bill. He presented the committee with a memorandum in support of S.B. 301. (See Exhibit 1)

The next proponent of the bill to testify was Dan Dykstra of the Northwestern Union Trust Co. of Helena, who told the committee that this will give the same deal for registered local savings as banks have for regular bank accounts.

John Cadby, representing the Montana Bankers Association, was the next proponent of S.B. 301 to testify. He said that he just wanted to reiterate what the previous witnesses had said, and that all banks in the state are in support of this bill.

The next proponent was John Campbell, representing the 1st Trust Co. of Montana, who told the committee that this bill will make it easier to accomplish these transactions.

At this time, the Chairman called for opponents to testify. Since there were no opponents present, he allowed committee members to question the witnesses. Senator Turnage asked if they would agree to the committee striking everything after the enacting clause and simply state "A certificate or other evidence of obligation is not necessary." The witnesses agreed to this suggestion.

At this time the Chairman thanked the witnesses and closed the hearing on S.B. 301.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/17

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		✓

SB 301

MEMORANDUM
IN SUPPORT OF A BILL

TO PERMIT EXPANDED OWNERSHIP OF CLEARING CORPORATIONS, TO AUTHORIZE THE DEPOSIT AND TRANSFER BY BOOK ENTRY OF INVESTMENT SECURITIES IN CLEARING CORPORATIONS, AND TO AUTHORIZE THE DEPOSIT AND TRANSFER BY BOOK ENTRY OF U. S. TREASURY AND U. S. AGENCY SECURITIES IN FEDERAL RESERVE BANKS.

A bill is proposed which in several respects would amend Montana law governing the holding and transferring of investment securities.

Background

Certificates for stock and other investment securities historically have been subject to repeated handling in the course of sale, pledge and other transactions which occur daily in large volume as part of the business of the nation's stock exchanges and other financial institutions. In order to facilitate such transactions, negotiable securities are frequently made payable to bearer, so that, like a personal check made out to cash or to bearer, they become subject to theft or mysterious disappearance. Book entry transfer of securities is a method of simultaneously facilitating the large volume of legitimate daily transfers of securities and eliminating the risk inherent in the circulation of securities in bearer form. Under the book entry method, the underlying securities are "immobilized" in the sense that there is no engraved certificate or other written instrument which embodies the owner's investment. Instead, the investment is evidenced by an entry on the books

of a responsible record-keeping institution, and transfer of ownership of the investment is accomplished by making appropriate entries in those record books.

Due to practical necessity engendered by the large volume of transactions occuring daily on the nation's stock exchanges, the organizations responsible for clearing these transactions (known as "clearing corporations") have been authorized for a number of years by Section 8-320 of the Uniform Commercial Code (the "UCC"), as adopted in forty-nine states and the District of Columbia, to accomplish the transfer of ownership and pledge of securities by means of book entries. The proposed bill contains several logical extensions of the book entry procedure that have been enacted into law recently by a number of states. The purpose of these provisions is to further facilitate the immobilization of investment securities and thereby avoid the risk inherent in their circulation in bearer form.

Proposed R.C.M. Section 5-1601

Increasingly, improvements in the facilities and procedures of clearing corporations such as The Depository Trust Company have made it feasible for banks and other financial institutions to deposit investment securities with such clearing corporations for safe keeping.

Many states, however, have laws which expressly prevent a fiduciary or custodian for a fiduciary from commingling

trust property with its own property. Similarly, some states have laws forbidding the commingling of the property of different trusts by a fiduciary or custodian for a fiduciary, and some states have laws that require a bank fiduciary or custodian for a fiduciary to retain physical possession or control of trust property. Banks in states whose laws have provisions such as these may refrain from availing themselves of the safety and efficiency of the book-entry procedure of clearing corporations for their trust securities, even though they are willing and able to use such facilities for their own securities and for securities they hold for non-fiduciary customers. Even in states whose laws contain no such express prohibitions, banks may be uncertain as to the extent of their common law powers.

The proposed Section 5-1601 would resolve such doubts by expressly authorizing any fiduciary, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary, to deposit those securities with a clearing corporation and thereby take advantage of the book entry method of holding and transferring securities. The various provisions of the proposed Section 5-1601 are intended to provide clearing corporations, fiduciaries, banks and trust companies with necessary flexibility, and to erect safeguards to ensure accountability to anyone with a legitimate interest in the securities so deposited.

Amendments to Sections 87A-8-102(3) and 87A-8-320

Section 8-102(3) of the UCC sets forth the definition of a "clearing corporation" for purposes of both Article 8 of the UCC and the proposed Section 5-1601. As initially adopted in all states, Section 8-102(3) defined a "clearing corporation" as a corporation, all of the capital stock of which is owned by a national securities exchange or association. In 1971, however, the New York Stock Exchange and the other members of the Banking and Securities Industry Committee launched a campaign to amend the definition of "clearing corporation" to permit expanded ownership of the stock of what is now The Depository Trust Company, one of the foremost clearing organizations and security depositories in the nation. Such expanded ownership is intended to give financial institutions representation in the management and control of The Depository Trust Company, thereby encouraging the deposit of securities and increased use of the book entry method of holding and transferring securities. To date, at least 38 states have enacted the amendment to Section 8-102(3) now being proposed for adoption in Montana.

The proposed addition of a subsection (6) to Section 8-320 of the UCC is intended to insure that the issuer will have the right to adequate information concerning the ownership and transfer of its securities even though physical evidence of the securities has been immobilized and the securities are held and transferred by means of the book entry method. This amendment to Section 8-320 is substantially the same as an amendment

recently enacted in the State of Minnesota.

Proposed R.C.M. Section 5-1602

The proposed R.C.M. Section 5-1602 would authorize fiduciaries, banks and trust companies to take advantage of regulations issued by the Federal Reserve System and the United States Treasury Department permitting the deposit and book entry of Treasury and certain other U.S. agency securities with each Federal Reserve Bank. The Treasury Department has had regulations authorizing the book entry procedure since 1968.

Although proposed R.C.M. Section 5-1602 thus covers a different type of depository, it is based on the same underlying considerations of state trust and fiduciary law, and has the same broad purposes as proposed R.C.M. Section 5-1601.

Proposed Section 5-1602 by its terms applies to any bank or trust company acting as fiduciary, whether chartered by federal or state government. Although only members of the Federal Reserve System are permitted under the rules of the Federal Reserve System to make such deposits directly, the bill further contemplates that any bank holding securities as custodian for a fiduciary may deposit such securities with the Federal Reserve Bank. Accordingly, any bank may obtain the benefits of this bill by using established custodianship arrangements with a bank which is a member of the Federal Reserve System.

A statute substantially similar to proposed Section 5-1602 was enacted in 1971 in the state of New York. Similar statutes have been enacted in at least nine other states

(Delaware, Virginia, Minnesota, Missouri, Kansas, Maine, Massachusetts, Tennessee and California). It is understood that within the near future, most, if not all, U. S. government bills and notes will be offered only on a book entry basis through the Federal Reserve Banks.

SENATE Judiciary COMMITTEE

BILL SB 301-278-210 VISITORS' REGISTER DATE 2-5-71

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOS
[illegible]	SEN.	278	✓	
[illegible]	MONT. BANKERS ASS'N		SB01	
John Johnson	Federal Reserve Bank		SB01	
[illegible]	[illegible]		SB01	
[illegible]	1ST TRUST Co. of MONT		SB01	
[illegible]	County Attorneys		[illegible]	

Feb 17

DISPOSITION OF SENATE BILL 301:

Senator Roberts moved that S.B. 301 DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 311:

Senator Roberts moved to amend page 7, line 22, by inserting "This section is not applicable if the father is a person whose consent to adoption is not required under 61-205." The motion carried unanimously.

There being no further business before the committee at this time, the committee adjourned at 11:10 a.m..

Jean A. Turnage

SEN. JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

Senate

45th LEGISLATIVE SESSION - - 1977 Date 2-17-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

HOUSE BUSINESS AND INDUSTRY COMMITTEE

March 18, 1977

The meeting was called to order at 10:00 a.m. with all members present with the exception of Reps. Bradley, Burnett and Tower, who were excused.

Senate Bill No. 231 was discussed. Sen. Rasmussen, sponsor, gave a brief explanation of the bill.

Mr. Ed Jasmin, proponent, stated that the common trust fund is a vehicle for investing trust funds of trust owners money (testimony attached).

Mr. John Cadby expressed his support in the bill along with Mr. Harold Pitts, Mr. Chuck Peterson, Mr. Gene Phillips, and Mr. George Bealle (testimonies attached).

Mr. Pitts stated that it would benefit small independent banks. Mr. Peterson said that his trust department is much smaller than most trust departments. He said this type of legislation is really needed and that with this type of bill it would be feasible.

There were no opponents.

Senate Bill No. ~~231~~ 301 was discussed. Sen. Rasmussen, sponsor, gave an explanation of the bill then introduced Mr. Bealle.

Mr. George Bealle said the purpose is to amend the Commercial Code. It will expedite transfer of securities. Also, it would provide for better protection of securities.

Mr. John Johnson, Mr. Ed Jasmin, Mr. John Cadby, and Mr. Harold Pitts expressed their support in the bill. Mr. Johnson stated that the bill would reduce the paperwork and it would also expedite the transfer of securities. Mr. Jasmin stated it would provide better efficienc because of centralization.

Senate Bill No. 182 was discussed. Sen. Roberts, sponsor, introduced Mr. Ross Cannon (testimony attached).

Mr. Ross Cannon gave an explanation of the bill stating that the amendments would provide that a single copy may be used for education process (attached).

There were no opponents or questions.

Senate Bill No. 280 was discussed. Sen. R. Smith, sponsor, gave an explanation of the bill stating that it would allow organizations to bargain for automobile insurance. It would work similar as people could get health insurance through a bank, automobile insurance people could be set up the same way. He then introduced Mr. Ernie Post.

Mr. Ernie Post stated that with the high cost of auto insurance at the present time, this type of legislation is badly needed.

Senate Bill 241 - Rep. Nathe moved that the amendments be adopted. The motion passed unanimously. He then moved that the bill BE CONCURRED IN AS AMENDED. The motion passed unanimously.

Senate Bill 280 - Rep. Kenny moved that the bill BE NOT CONCURRED IN. Rep. Metcalf made a substitute motion to adopt the amendment. Rep. Scully moved to pass consideration for the day. Rep. Scully's motion was passed.

Senate Bill 301 - Rep. Fabrega moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 328 - Rep. Tropila moved that the amendments be adopted and as amended, to table the bill. The motion passed with Rep. Vincent voting NO.

Senate Bill 345 - Rep. Vincent moved to pass consideration. The motion passed.

Senate Bill 370 - Rep. Vincent moved to pass consideration. The motion passed.

Senate Bill 386 - Rep. Nathe moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 426 - Rep. Quilici moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Joint Resolution 37 - Rep. Scully moved that the bill BE NOT CONCURRED IN. The motion passed with Reps. Aageson and Quilici voting NO.

Senate Bill 366 - Rep. Tropila moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 305 - Rep. Fabrega moved to adopt the amendments proposed by Mr. Clarke. The motion passed unanimously. Rep. Fabrega then moved that the bill BE NOT CONCURRED IN AS AMENDED. The motion passed with Reps. Quilici, Harrington, Shelden, Metcalf, Harper and Vincent voting NO, Rep. Tropila abstaining.

The meeting adjourned at 1:25 p.m.

JOHN VINCENT, Chairman

SENATE BILL NO. 301

INTRODUCED BY RASMUSSEN, GALT, DEVINE, THOMAS, WARDEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947."

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(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

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(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company

REFERENCE BILL

registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and does not hold in excess of 20% of the capital stock of the corporation; or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim." Section 87A-8-301.

"Bona fide purchaser." Section 87A-8-302.

"Broker." Section 87A-8-303.

"Guarantee of the signature." Section 87A-8-402.

"Intermediary bank." Section 87A-4-105.

"Issuer." Section 87A-8-201.

"Overissue." Section 87A-8-104.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 87A-8-320, R.C.M. 1947, is amended to read as follows:

"87A-8-320. Transfer or pledge within a central depository system. (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible

bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 87A-8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 87A-9-304 and 87A-9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons

who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list."

Section 3. There is a new R.C.M. section numbered 5-1601 that reads as follows:

5-1601. Definitions. For the purposes of 5-1602 and 5-1603, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Section 4. There is a new R.C.M. section numbered

5-1602 that reads as follows:

"5-1602. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 5-1601, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 87A-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing

securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Section 5. There is a new R.C.M. section numbered 5-1603 that reads as follows:

5-1603. Fiduciaries -- deposit of United States government and agency securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 5-1601, and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the

federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on the effective date of this section or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

Section 6. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through ~~14~~ 16);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92)."

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